

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	CRIMINAL NO. 05-461 (JBS)
	:	
v.	:	HON. JEROME B. SIMANDLE
	:	
D-1 HUA YOU,	:	
a/k/a “Lee Fan Ming,”	:	
a/k/a “Richard,”	:	
a/k/a “Ah Keung,”	:	18 U.S.C. § 371
D-2 BILLY CHENG NGO,	:	18 U.S.C. § 545
D-3 VAN CHIC PHU,	:	18 U.S.C. § 2320
a/k/a “Steve,”	:	18 U.S.C. § 2342
D-4 DICK HAK WONG,	:	18 U.S.C. § 2
a/k/a “Vick”	:	18 U.S.C. § 982
and	:	21 U.S.C. § 841
D-5 CECILIA PENG	:	21 U.S.C. § 846
	:	21 U.S.C. § 853
Defendants	:	

SUPERSEDING INDICTMENT

THE GRAND JURY IN AND FOR THE DISTRICT OF NEW JERSEY,
SITTING AT CAMDEN, CHARGES:

INTRODUCTION

1. At all relevant times, a “Trademark,” as defined in Title 15, United States Code, Section 1127, is any word, name, symbol or device or any combination thereof, used by a person to distinguish his or her goods, including a unique product, from that manufactured or sold by others and to indicate the source of the goods. The term “Mark” includes any trademark.

2. At all relevant times, a “Registered Trademark,” as defined in Title 15, United States Code, Section 1127, is a trademark registered in the United States Patent and Trademark

Office according to law.

3. At all relevant times, and for purposes of this superseding indictment, a “Counterfeit Mark,” as defined in Title 18, United States Code, Section 2320 (e)(1)(A), is a spurious mark that is used in connection with trafficking in goods and services which is identical to, or substantially indistinguishable from, a mark registered for those goods on the principal register for the United States Patent and Trademark Office, and in use, and the use of which is likely to cause confusion, to cause mistake, or to deceive the potential purchasers of the counterfeit goods.

4. At all relevant times, and for purposes of this superseding indictment, the term “Counterfeit Cigarettes” refers to cigarettes bearing counterfeit marks and trademarks.

5. Contraband Cigarettes is a statutorily defined term which means a quantity in excess of 60,000 cigarettes (generally seven cases of cigarettes) which bear no evidence of the payment of applicable state cigarette taxes in the state where such cigarettes are found, if such state requires a stamp, impression or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes. 18 U.S.C. § 2341(2).

6. At all relevant times, the State of New Jersey imposed a state tax on cigarettes and
required a state cigarette tax stamp on the cigarette packages.

7. The brand name cigarettes “Newport,” and “Newport 100's” are cigarettes manufactured in Greensboro, North Carolina by the Lorillard Tobacco Company. At all relevant times, the brand names “Newport” and “Newport 100's” were Registered Trademarks of the Lorillard Licensing Company, LLC and the trademarks and the right to enforce the trademarks

had been assigned to the Lorillard Tobacco Company.

8. The brand name cigarettes “Hongmei” and “Hongtashan” are cigarettes manufactured in Yunnan, China by the Yuxi Hongta Tobacco Co., Ltd. At all relevant times, the brand names “Hongmei” and “Hongtashan” were Registered Trademarks of the Yuxi Hongta Tobacco Co., Ltd.

9. The brand name cigarettes “Septwolves” are cigarettes manufactured in Longyan, China by the Longyan Cigarette Factory Corporation. At all relevant times, the brand name “Septwolves” was a Registered Trademark of the Longyan Cigarette Factory Corporation.

10. The brand name cigarettes “Yun Yan” and “Scarlett Camellia” are cigarettes manufactured in Yunnan, China by the Kuming Cigarette Factory Corporation.

11. “Bill of Lading” refers to a document that a transportation company possesses, acknowledging that it has received goods, which temporarily serves as the title to the goods during the transport of the merchandise.

12. As used in this superseding indictment, the term “container” is a reference to a large metal box approximately 40 feet in length used to transport bulk cargo on board ships as well as on tractor-trailer trucks. It is capable of transporting a maximum of approximately 1,100 cases of cigarettes.

13. As used in this superseding indictment, the term “Case” or “Master case” of cigarettes generally describes a case of Contraband Cigarettes which contains fifty (50) cartons of cigarettes; the term “Carton” of cigarettes describes a carton which contains ten (10) packages; the term “Package” of cigarettes describes a package which contains twenty (20) individual cigarettes. Therefore, one case of cigarettes typically contains 10,000 individual

cigarettes. In some instances, a case of cigarettes may contain sixty (60) cartons of cigarettes or 12,000 individual cigarettes. Legitimate cases of cigarettes always contain sixty (60) cartons.

COUNT ONE
(Conspiracy to Smuggle Cigarettes into the United States, Traffic in Goods Bearing Counterfeit Marks and Traffic in Contraband Cigarettes)

1. The allegations set forth in the Introduction of this Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. Beginning in or about February 2004, and continuing through in or about September, 2004, in the District of New Jersey and elsewhere, defendants,

HUA YOU,
a/k/a “Lee Fan Ming,”
a/k/a “Richard,”
a/k/a “Ah Keung,”
BILLY CHENG NGO,
VAN CHIC PHU,
a/k/a “Steve”
and
DICK HAK WONG,
a/k/a “Vick”

did knowingly and willfully conspire and agree with each other, with other unindicted co-conspirators, and with others both known and unknown to the grand jury, to commit the following offenses against the United States, that is:

- 1) to fraudulently and knowingly import and bring into the United States merchandise, namely, counterfeit and contraband cigarettes, contrary to law, and receive, conceal, buy, sell and facilitate the transportation, concealment and sale of such counterfeit and contraband cigarettes after importation, knowing the counterfeit and contraband cigarettes to have been imported and brought into the United States contrary to law,

contrary to Title 18, United States Code, Section 545;

- 2) to intentionally traffic in goods, namely, cigarettes, and knowingly use counterfeit marks on and in connection with such cigarettes, contrary to Title 18, United States Code, Section 2320(a); and
- 3) to unlawfully and knowingly ship, transport, receive, possess, sell, distribute and purchase contraband cigarettes, as that term is defined in Title 18, United States Code, Section 2341(2), namely, millions of cigarettes, which bear no evidence of the payment of applicable state cigarette taxes, contrary to Title 18, United States Code, Section 2342(a).

OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the defendants and their co-conspirators committed and caused to be committed the following overt acts, among others, in the District of New Jersey and elsewhere:

1. On or about March 4, 2004, HUA YOU and DICK HAK WONG met in Atlantic City, New Jersey with undercover Federal Bureau of Investigation Special Agents who were posing as members of a separate criminal organization (hereafter “undercover agent[s]”) and solicited the assistance of the undercover agents to smuggle a shipping container of counterfeit and contraband cigarettes into Port Newark, New Jersey from the People’s Republic of China (hereafter “China”).
2. On or about March 6, 2004, an undercover agent sent to HUA YOU by facsimile transmission a sample bill of lading for the container of counterfeit and contraband cigarettes.
3. On or about March 9, 2004, an undercover agent sent to HUA YOU via electronic

mail ("e-mail") instructions regarding delivery of the bill of lading to the transportation company to insure the container of counterfeit and contraband cigarettes was not seized at Port Newark, New Jersey.

4. On or about March 22, 2004, a co-conspirator engaged in a telephone conversation with an undercover agent and discussed sending the original bill of lading to the undercover agent.

5. Prior to on or about April 16, 2004, co-conspirators in Hong Kong, China, sent to undercover agents via Federal Express a package which contained the original bill of lading for a 944 case container of counterfeit and contraband Newport, Newport 100's, Hongmei, Hongtashan, Septwolves, Yun Yan and Scarlett Camellia brand cigarettes falsely listed on the bill of lading as toy products (the April 2004 Shipment).

6. Prior to on or about April 17, 2004, HUA YOU, BILLY CHENG NGO, VAN CHIC PHU and DICK HAK WONG, acting in concert with others, caused the transportation to Port Newark, New Jersey of the April 2004 Shipment.

7. On or about April 23, 2004, BILLY CHENG NGO engaged in a telephone conversation with an undercover agent and discussed the transmission to the undercover agent of invoices for the April 2004 Shipment.

8. On or about April 26, 2004, BILLY CHENG NGO engaged in a telephone conversation with an undercover agent and discussed the April 2004 Shipment.

9. On or about May 4, 2004, BILLY CHENG NGO engaged in a telephone conversation with an undercover agent and discussed arrangements for delivery of the April 2004 Shipment.

10. On or about May 10, 2004, BILLY CHENG NGO engaged in a telephone conversation with an undercover agent and discussed delivery of a portion of the April 2004 Shipment to a location in New Jersey.

11. On or about May 11, 2004, VAN CHIC PHU engaged in a telephone conversation with an undercover agent and advised the agent that the delivery would be made to a storage facility in Lodi, New Jersey.

12. On or about May 12, 2004, HUA YOU and VAN CHIC PHU met with undercover agents in New Jersey, discussed delivery of 450 cases from the April 2004 Shipment and received from an undercover agent sample cartons of cigarettes from the April 2004 Shipment.

13. On or about May 14, 2004, HUA YOU, BILLY CHENG NGO and VAN CHIC PHU caused and directed the delivery of 444 cases from the April 2004 Shipment from an undercover warehouse in New Jersey to a storage facility in Lodi, New Jersey where HUA YOU, VAN CHIC PHU and co-conspirators not named as defendants herein took possession of the cigarettes and loaded them into storage lockers.

14. On or about May 14, 2004, VAN CHIC PHU met with an undercover agent and provided approximately \$35,000 to the agent as partial payment for the agents' importation and delivery services related to the April 2004 Shipment.

15. On or about May 23, 2004, BILLY CHENG NGO engaged in a telephone conversation with an undercover agent and discussed delivery of the remainder of the April 2004 Shipment.

16. On or about June 14, 2004, VAN CHIC PHU engaged in a telephone

conversation with an undercover agent and discussed delivery of the remainder of the April 2004 Shipment.

17. On or about July 20, 2004, VAN CHIC PHU engaged in a telephone conversation with an undercover agent and discussed delivery of the remainder of the April 2004 Shipment.

18. On or about August 25, 2004, HUA YOU, BILLY CHENG NGO and VAN CHIC PHU caused and directed the delivery of approximately 376 cases from the April 2004 Shipment from the undercover warehouse in New Jersey to a storage facility in Lodi, New Jersey where VAN CHIC PHU and co-conspirators not named as defendants herein took possession of the cigarettes and loaded them into storage lockers.

19. On or about August 25, 2004, VAN CHIC PHU met with an undercover agent, provided \$20,000 to the agent as partial payment for the agent's importation and delivery services related to the April 2004 Shipment, was informed by the agent that approximately 124 cases remained at the warehouse and discussed the sale of 3,4-methylenedioxymethamphetamine ("ecstasy") to the agent.

20. On or about August 27, 2004, HUA YOU and VAN CHIC PHU met with undercover agents in Atlantic City, New Jersey, discussed delivery of the remaining cases from the April 2004 Shipment, the money owed to agents for delivery services and the purchase of 4,000 ecstasy pills from VAN CHIC PHU.

21. On or about September 4, 2004, VAN CHIC PHU engaged in a telephone conversation with an undercover agent and discussed delivery of the remaining 124 cases from

the April 2004 Shipment to Lodi, New Jersey.

22. On or about September 13, 2004, HUA YOU, BILLY CHENG NGO and VAN CHIC PHU caused and directed the delivery of 124 cases from the April 2004 Shipment from the undercover warehouse in New Jersey to a storage facility in Lodi, New Jersey where VAN CHIC PHU and a co-conspirator not named as defendant herein took possession of the cigarettes and loaded them into storage lockers.

23. On or about September 13, 2004, VAN CHIC PHU met with an undercover agent and provided \$15,000 to the agent as final payment for the agents' importation and delivery services related to the April 2004 Shipment.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO
(Smuggling Counterfeit Cigarettes)

1. The allegations set forth in the Introduction of this Superseding Indictment and the Overt Acts alleged in Count One are re-alleged and incorporated as if fully set out herein.

2. From on or about April 17, 2004, to on or about September 13, 2004, in the District of New Jersey and elsewhere, defendants

HUA YOU,
a/k/a “Lee Fan Ming,”
a/k/a “Richard,”
a/k/a “Ah Keung,”
BILLY CHENG NGO,
VAN CHIC PHU,
a/k/a “Steve”
and
DICK HAK WONG,
a/k/a “Vick”

did fraudulently and knowingly smuggle and clandestinely introduce into the United States, merchandise, namely counterfeit and contraband cigarettes, which should have been invoiced and did make out and pass and cause the making out and passing of false, forged and fraudulent invoices, documents and paper, and did fraudulently and knowingly receive, conceal, buy, sell, and facilitate the transportation, concealment and sale of such merchandise after importation, knowing the counterfeit and contraband cigarettes to have been imported and brought into the United States contrary to law, in that defendants failed to invoice such merchandise and did make out and pass and cause the making out and passing of false, forged and fraudulent invoices,

documents and paper pertaining to said merchandise, contrary to Title 18, United States Code, Sections 542, 1001, and Title 19, United States Code, Sections 1481.

In violation of Title 18, United States Code, Sections 545 and 2.

COUNT THREE
(Trafficking in Goods Bearing Counterfeit Marks)

1. The allegations set forth in the Introduction of this Superseding Indictment and the Overt Acts alleged in Count One are re-alleged and incorporated as if fully set out herein.

2. From on or about April 17, 2004, through on or about September 13, 2004, in the District of New Jersey and elsewhere, defendants

HUA YOU,
a/k/a “Lee Fan Ming,”
a/k/a “Richard,”
a/k/a “Ah Keung,”
BILLY CHENG NGO,
VAN CHIC PHU,
a/k/a “Steve”
and
DICK HAK WONG,
a/k/a “Vick”

did knowingly and intentionally traffic, attempt to traffic and aid and abet the trafficking in goods, namely, cigarettes, and did knowingly use and aid and abet the use of counterfeit marks, specifically the brand names “Newport,” “Newport 100’s,” “Hongmei,” “Hongtashan” and “Septwolves” on and in connection with such goods, which marks were identical with and substantially indistinguishable from genuine marks in use and duly registered for those goods on the principal register in the United States Patent and Trademark Office, and the use of which marks was likely to cause confusion, to cause mistake and to deceive.

In violation of Title 18, United States Code, Sections 2320(a) and 2.

COUNTS FOUR through SIX
(Trafficking in Contraband Cigarettes)

1. The allegations set forth in the Introduction of this Superseding Indictment and the Overt Acts alleged in Count One are re-alleged and incorporated as if fully set out herein.

2. On or about the dates alleged below, in the District of New Jersey and elsewhere, the defendants set forth below did knowingly and unlawfully ship, transport, receive, possess, sell, distribute and purchase and cause the shipment, transportation, receipt, possession, sale, distribution and purchase, of contraband cigarettes, as that term is defined in Title 18, United States Code, Section 2341(2), in the approximate amount(s) set forth below, which bore no evidence of the payment of applicable state cigarette taxes for the State of New Jersey:

Count	Date	Defendant(s)	Approximate Number of Cases and Cigarettes
4	On or about May 14, 2004	HUA YOU, BILLY CHENG NGO and VAN CHIC PHU	444 cases; 4,440,000 cigarettes
5	On or about August 25, 2004	HUA YOU, BILLY CHENG NGO and VAN CHIC PHU	376 cases; 3,760,000 cigarettes
6	On or about September 13, 2004	HUA YOU, BILLY CHENG NGO and VAN CHIC PHU	124 cases; 1,240,000 cigarettes

In violation of Title 18, United States Code, Sections 2342(a) and 2.

COUNT SEVEN
(Conspiracy to Distribute Narcotics)

1. The allegations set forth in the Introduction of this Superseding Indictment and in paragraphs 19 and 20 alleged in Count One are re-alleged and incorporated as if fully set out herein.

2. From in or about August 2004 to in or about January 2005, in the District of New Jersey, the Central District of California and elsewhere, defendants

VAN CHIC PHU,
a/k/a “Steve”
and
CECILIA PENG

did knowingly and intentionally conspire and agree with each other and others to distribute and to possess with intent to distribute quantities of 3,4-methylenedioxymethamphetamine (“MDMA”), namely ecstasy, a Schedule I narcotic drug controlled substance, contrary to Title 21, United States Code, Sections 841(a) (1) and (b)(1)(C).

In violation of Title 21, United States Code, Section 846.

COUNT EIGHT
(Distribution of Narcotics)

1. The allegations set forth in the Introduction of this Superseding Indictment and in paragraphs 19 and 20 alleged in Count One are re-alleged and incorporated as if fully set out herein.

2. On or about September 30, 2004, in the District of New Jersey, the Central District of California and elsewhere, defendants

VAN CHIC PHU,
a/k/a “Steve”
and
CECILIA PENG

did knowingly and intentionally distribute and possess with intent to distribute a quantity of 3,4-methylenedioxymethamphetamine (“MDMA”), namely ecstasy, a Schedule I narcotic drug controlled substance.

In violation of Title 21, United States Code, Sections 841(a) (1) and (b)(1)(C) and Title 18, United States Code, Section 2.

FIRST FORFEITURE ALLEGATION

1. The allegations contained in Count 2 are incorporated as if set forth at length herein for the purposes of noticing forfeiture, pursuant to Title 18, United States Code, Section 982(a)(2).

2. Pursuant to Title 18, United States Code, Section 982(a)(2), each defendant who is convicted of an offense set forth in Count 2 of this Superseding Indictment shall forfeit to the United States pursuant to 18 U.S.C. § 982(a)(2)(B), any property that constitutes or is derived from proceeds the defendant obtained directly or indirectly, as a result of such violation, including but not limited to the following:

MONEY JUDGEMENT

A sum of money equal to \$500,000 in United States currency, representing the amount of proceeds obtained as a result of the offense, smuggling counterfeit and contraband cigarettes, for which the defendants are jointly and severally liable.

3. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), each defendant shall forfeit substitute property, up to the value of the amount described in paragraph 2 above, if, by any act and omission of any defendant, the property described in paragraph 2, or any portion thereof:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred, sold to, or deposited with a third party;

- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty.

Pursuant to Title 18, United States Code, Section 982(a)(2).

SECOND FORFEITURE ALLEGATION

1. The allegations contained in Counts 7 and 8 are incorporated as if set forth at length herein for the purposes of noticing forfeiture, pursuant to Title 21, United States Code, Section 853.

2. Each defendant who is convicted of an offense set forth in Counts 7 and 8 of this Superseding Indictment shall forfeit to the United States pursuant to 21 U.S.C. § 853, any and all property constituting and derived from any proceeds the defendants obtained directly and indirectly as a result of the said violations and any and all property used and intended to be used in any manner and part to commit and to facilitate the commission of the violations alleged in Counts 7 and 8 of this Superseding Indictment, including but not limited to the following:

1. MONEY JUDGMENT

A sum of money equal to \$25,000 in United States currency, representing the amount of proceeds obtained as a result of the conspiracy to distribute quantities of 3,4-methylenedioxymethamphetamine (“MDMA”), namely ecstasy, in violation of Title 21, United States Code, Section 846 and the distribution of quantities of MDMA, namely ecstasy, in violation of Title 21, United States Code, Section 841(a), and Title 18, United States Code, Section 2, for which the defendants are jointly and severally liable.

3. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third person;
(3) has been placed beyond the jurisdiction of the Court;
(4) has been substantially diminished in value; or
(5) has been commingled with other property which cannot be subdivided without difficulty;
it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

Pursuant to Title 21, United States Code, Section 853.

A TRUE BILL

FOREPERSON

CHRISTOPHER J. CHRISTIE
United States Attorney